

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JAMES WESLEY WHITE,

Petitioner,

v.

CASE NO. 2:03-CV-842
CRIM. NO. 2:00-CR-0050
JUDGE MARBLEY
MAGISTRATE KING

UNITED STATES OF AMERICA,

Respondent.

OPINION AND ORDER

On June 3, 2009, the Magistrate Judge issued a *Report and Recommendation* recommending that petitioner's motion under Rule 60(b) of the Federal Rules of Civil Procedure be construed as a successive petition and transferred to the United States Court of Appeals for the Sixth Circuit for authorization for filing. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*.

Petitioner objects to the Magistrate Judge's recommendation that this case be transferred to the Sixth Circuit as a successive petition. He again argues that this Rule 60(b) motion, in which he asserts that his attorney failed to disclose a conflict of interest and alleges prosecutorial misconduct in grand jury proceedings, raises an issue of fraud or a challenge to the integrity of judicial proceedings such that his motion may be properly construed under Rule 60(b). *See Objections*.

Pursuant to 28 U.S.C. §636(b), this Court has conducted a *de novo* review of the

Report and Recommendation. For the reasons detailed by the Magistrate Judge, this Court agrees that petitioner's Rule 60(b) motion raises new claims as that term is defined under *Gonzalez v. Crosby*, 545 U.S. 524 (2005). The motion must therefore be transferred to the United States Court of Appeals for the Sixth Circuit as a successive petition.

Petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. Petitioner's motion under Rule 60(b) is **TRANSFERRED** to the United States Court of Appeals for the Sixth Circuit for authorization for filing as a successive petition.

IT IS SO ORDERED.

s/Algenon L. Marbley
ALGENON L. MARBLEY
United States District Judge